

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

CHARLES BERARD,

Defendant.

ORDER

S2 22 CR 252 (VB)

In his memorandum of law in support of his motion to suppress, filed July 5, 2023, defendant Berard conceded that the vehicle in which he was a passenger at the time of the traffic stop on May 10, 2022, was pulled over after it changed lanes without signaling, in violation of the New York Vehicle and Traffic Law. (Doc. #77 at 2). The Court referred to that concession in its order dated September 1, 2023 (Doc. #91), and also stated on the record at the hearing on September 14, 2023, that Berard conceded there was a lawful basis for the traffic stop. (9/14/2023 Tr. 6). Berard did not contest the Court's statement.

On October 13, 2023, as directed by the Court, the government filed a supplemental submission in opposition to the motion to suppress. (Doc. #102) On October 26, 2023, Berard filed a response, entitled "second motion to suppress evidence" (Docs. ##103, 104),¹ in which he asserts, for the first time and contrary to his prior submission, that the vehicle in which he was a passenger did not, in fact, commit a traffic violation. (Doc. #104 at 5-6). Berard also submitted an affidavit to that effect. (Doc. #104-1). Berard also made several entirely new arguments in his "second motion" that he had not made before. Berard filed his "second motion" to suppress despite the fact that the Court did not authorize Berard to file a "second motion."

In view of the foregoing, it is hereby ORDERED:

1. By November 7, 2023, Berard's counsel, Ms. Chorny, shall submit a letter explaining (i) why Berard is now taking a position contrary to his original position with respect to the traffic violation, (ii) the basis on which counsel believes Berard was entitled to make entirely new arguments in his most recent submission.
2. By November 14, 2023, the government shall file a letter in response to Ms. Chorny's letter. Whatever else it might say, the government's letter should address the following: whether Berard's "second motion" is untimely and should even be considered by the Court, whether the government wishes to file an opposition to the "second motion," and whether the government believes an evidentiary hearing is necessary.

¹ For reasons that are not clear, the "second motion" was filed twice.

3. After it receives the foregoing letters, the Court will decide how best to proceed, including whether the scheduled hearing on November 29, 2023, at 2:30 p.m., should proceed or be adjourned.

Dated: October 31, 2023
White Plains, NY

SO ORDERED:



Vincent L. Briccetti
United States District Judge